

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA
9

10 MILO W. HICKS,

11 Petitioner,

12 vs.

13 DWIGHT NEVEN, *et al.*,

14 Respondents.
15

)
)
) Case No. 2:13-cv-01650-JAD-CWH
)
)

ORDER

16 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254,
17 by a Nevada state prisoner.

18 Petitioner has filed a motion to proceed *in forma pauperis*. (Doc. 1). Based on the
19 information regarding petitioner's financial status, the Court finds that the motion to proceed *in*
20 *forma pauperis* should be granted.

21 Petitioner has filed a motion to file pages in excess of what is permitted using the court-
22 approved form for filing § 2254 habeas petitions. (Doc. 2). Good cause appearing, petitioner's
23 motion is granted.

24 Petitioner has filed a motion for the appointment of counsel. (Doc. 3). Pursuant to 18 U.S.C.
25 § 3006(a)(2)(B), the district court has discretion to appoint counsel when it determines that the
26

1 “interests of justice” require representation. There is no constitutional right to appointed counsel for
2 a federal habeas corpus proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v.*
3 *Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally
4 discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023
5 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984).
6 However, counsel must be appointed if the complexities of the case are such that denial of counsel
7 would amount to a denial of due process, and where the petitioner is a person of such limited
8 education as to be incapable of fairly presenting his claims. *See Chaney*, 801 F.2d at 1196; *see also*
9 *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). The petition on file in this action is well-written
10 and sufficiently clear in presenting the issues that petitioner wishes to bring. The issues in this case
11 are not complex. It does not appear that counsel is justified in this instance. The motion for
12 appointment of counsel is denied.

13 The petition shall now be filed and served on respondents. A petition for federal habeas
14 corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include
15 such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that
16 claim. *See* 28 U.S.C. §2254(b) (successive petitions).

17 **IT IS THEREFORE ORDERED** that the application to proceed *in forma pauperis* (Doc. 1)
18 is **GRANTED**.

19 **IT IS FURTHER ORDERED** that petitioner’s motion to file excess pages (Doc. 2) is
20 **GRANTED**.

21 **IT IS FURTHER ORDERED** that petitioner’s motion for appointment of counsel (Doc. 3)
22 is **DENIED**.

23 **IT IS FURTHER ORDERED** that the Clerk shall **FILE and ELECTRONICALLY**
24 **SERVE** the petition (ECF No. 1-1 & 1-2) upon the respondents.

1 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from entry
2 of this order within which to answer, or otherwise respond to, the petition. In their answer or other
3 response, respondents shall address all claims presented in the petition. Respondents shall raise all
4 potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and
5 procedural default. **Successive motions to dismiss will not be entertained.** If an answer is filed,
6 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in the
7 United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have
8 **forty-five (45) days** from the date of service of the answer to file a reply.

9 **IT IS FURTHER ORDERED** that any state court record exhibits filed by respondents shall
10 be filed with a separate index of exhibits identifying the exhibits by number or letter. The hard copy
11 of all state court record exhibits shall be forwarded, for this case, to the staff attorneys in the **Reno**
12 Division of the Clerk of Court.

13 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the Attorney
14 General of the State of Nevada a copy of every pleading, motion, or other document he submits for
15 consideration by the Court. Petitioner shall include with the original paper submitted for filing a
16 certificate stating the date that a true and correct copy of the document was mailed to the Attorney
17 General. The Court may disregard any paper that does not include a certificate of service. After
18 respondents appear in this action, petitioner shall make such service upon the particular Deputy
19 Attorney General assigned to the case.

20 Dated this 31st day of January, 2014.

21
22 
23 UNITED STATES DISTRICT JUDGE
24
25
26